

Appl. No. 10/736,282
Docket No. AA556C
Amdt. dated September 17, 2008
Reply to Office Action mailed on August 18, 2008
Customer No. 27752

REMARKS

Claim Status

Claims 1-18 are pending in the present application. No additional claims fee is believed to be due.

Claim 3 is canceled without prejudice.

Claim 1 has been amended to include the features recited in claim 3.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Interview Summary

Applicants would like to thank Examiner Hand for extending Applicants' attorney the courtesy of a telephone interview on September 16, 2008. As discussed during the interview, it is Applicants' position that the combination of Nakahata in view of Malowaniec does not teach or suggest an extensibility controlling means that exerts a tension force of greater than or equal to 125 grams/25mm when the chassis layer extends beyond 20%, and that one of ordinary skill in the art would not be motivated to modify Nakahata to provide the extensibility controlling means recited in claim 1 of the present application. In view of the interview and the discussions held therein, Applicants respond below to the rejections raised by the Office.

Rejection Under 35 USC §103(a) Over Nakahata in view of Malowaniec

Claims 1-18 have been rejected under 35 USC §103(a) as being unpatentable over U.S. Pat. No. 5,873,868 to Nakahata, et al. (hereinafter "Nakahata") in view of U.S. Pat. No. 6,049,915 to Malowaniec (hereinafter "Malowaniec"). Applicants respectfully traverse the rejection.

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, the Office must show that all of the claim elements are taught or suggested in the prior art. *See, e.g., CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 68 U.S.P.Q.2D 1940 (Fed. Cir. 2003).

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An invention composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. (*KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1741 (2007)). There must be a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” (*Id.*).

The Office Action states that “Nakahata discloses an extensibility controlling means in the form of elastic waist feature 34 to control the extensibility of the chassis layer” (The Office Action, page 4). The Office Action also states “[t]he extensibility controlling means 34 of Nakahata is an elastic material wherein the extensibility controlling means inhibits the chassis layer from extending beyond extensibility causing breakage of the chassis layer via its ability to contract when an elongation force is removed” (*Id.*). The Office Action states that “Nakahata is silent regarding a percent elongation of the topsheet associated with a tension force of 125 grams/25mm” (The Office Action, page 5). However, the Office Action asserts that it would have been obvious to provide an extensibility controlling means with the recited tension force to prevent breakage of the chassis layer. (*Id.*). Applicants respectfully disagree with the Office’s interpretation of the scope of Nakahata.

As best understood by Applicants, Nakahata is directed to an absorbent article that includes an elastically extensible topsheet having a plurality of slits or cuts therein such that when a lateral tensile force is applied to the topsheet (i.e., when the absorbent is worn by a wearer), the slits form openings that allow the passage of solid and semi-solid bodily exudates to the absorbent core. (Nakahata, Abstract). Nakahata discloses that when the tensile forces are relaxed (i.e., when the absorbent article is removed from a wearer), the slits close to substantially conceal from view the bodily exudates. (*Id.*).

Applicants submit that one of ordinary skill in the art would recognize that Nakahata is directed to providing a topsheet that passes solid and semi-solid bodily exudates through the topsheet to potentially reduce the amount of exudates that contact the skin of a wearer, and when the absorbent article is removed from the wearer by a caregiver, the topsheet may conceal the exudates from view so that the caregiver may be

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spared the undesirable sight of bodily exudates in the absorbent article. Applicants also submit that one of ordinary skill in the art would not be motivated to modify Nakahata to provide an extensibility control means with the particular tension force(s) recited in claim 1 of the present application, because Nakahata is not concerned with inhibiting the extension of the chassis layer (i.e., the slits of Nakahata are present only in the topsheet and not the backsheet).

The Office Action states that "the prior art of Malowaniec is introduced to remedy the deficiency of Nakahata as to a plurality of spaced discontinuities in the chassis layer." (The Office Action, page 2). Therefore, it is Applicant's understanding that Malowaniec does not disclose an extensibility controlling means as recited in claim 1 of the present application.

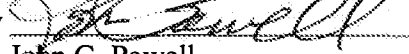
In view of the foregoing remarks, Applicants submit that claims 1-18 are patentable over the combination of Nakahata and Malowaniec. Accordingly, Applicants respectfully request that the rejection of claims 1-18 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference(s). In view of the foregoing, entry of the amendment(s) presented herein, reconsideration of this application, and allowance of the pending claim(s) are respectfully requested.

Respectfully submitted,

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